

**MINUTES OF THE FEBRUARY 2014 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Friday, February 7, 2014, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Representative Dawn Pettengill, Chair, and Senator Wally Horn, Vice Chair; Senators Mark Chelgren, Thomas Courtney, Pam Jochum, and Roby Smith; Representatives Lisa Heddens, Rick Olson, Jeff Smith, and Guy Vander Linden were present.
- Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Larry Johnson, Deputy Legal Counsel, Office of the Governor; fiscal staff; caucus staff; and other interested parties.
- Convened Rep. Pettengill convened the meeting at 9:09 a.m.
- Motions Sen. Jochum moved that Sen. Horn be elected chair of the committee, and Sen. Courtney moved that Rep. Pettengill be elected vice chair of the committee.
- Motions carried Sen. Horn and Rep. Pettengill were elected chair and vice chair, respectively. Sen. Smith and Sen. Courtney commended Rep. Pettengill and Sen. Horn for their service.
- Fiscal overview** Adam Broich presented the LSA fiscal report.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg represented the department.
- ARC 1261C No action on amendments to ch 7 pertaining to appeals and hearings.
- ARC 1262C No action on amendments to chs 9 and 97 relating to confidentiality of support payment records. Ms. Freudenberg confirmed for Rep. Pettengill that ARC 1045C, the Notice of Intended Action for these amendments, had been reviewed at the October 2013 meeting.
- ARC 1268C No action on amendments to chs 51 and 52 concerning annual adjustments to eligibility and payment levels related to the state supplementary assistance program.
- ARC 1266C No action on 75.30 pertaining to the Iowa Medicaid lock-in program.
- ARC 1264C No action on 78.13 pertaining to nonemergency medical transportation.
- ARC 1287C No action on amendments to ch 86 concerning the healthy and well kids in Iowa (HAWK-I) program.
- ARC 1263C No action on amendments to 119.1 to 119.5 pertaining to conditional employment for certain employees and conditional participation in training programs pending completion of record check evaluations.
- UTILITIES DIVISION** Cecil Wright represented the division.
- ARC 1259C No action on amendments to 25.4 concerning pole attachment procedures.
- CHILD ADVOCACY BOARD** Jim Hennessey represented the board.
- ARC 1285C No questions on proposed renumbering of ch 4 as ch 5 and the adoption of ch 4 relating to the court appointed special advocate program.
- ECONOMIC DEVELOPMENT AUTHORITY** Kristin Hanks represented the authority.
- ARC 1289C No questions on proposed amendments to 115.9(1) regarding the time frame for submittal of documentation related to tax credits for investments in qualifying businesses.
- INSPECTIONS AND APPEALS DEPARTMENT** David Werning represented the department.
- ARC 1291C No questions on proposed amendments to 69.28(6) and 70.28(6) pertaining to limitations on food activities for assisted living and adult day services programs not licensed as food establishments.
- LABOR SERVICES DIVISION** Kathleen Uehling represented the division.
- ARC 1271C No action on ch 156, bidder preferences in government contracting.

LOTTERY AUTHORITY, IOWA Mary Neubauer and Molly Juffernbruch represented the authority.

ARC 1283C Proposed amendments to 12.12(4) pertain to the suspension of retailers for ticket sales to underage persons. Ms. Juffernbruch explained that the current rule requires the authority to suspend a retailer's license for seven days when an employee of the retailer is found to have sold a lottery ticket(s) to a person under the age of 21. She stated that the amendments, which change the word "shall" to "may," are intended to provide the authority with the discretion to waive suspension when a retailer reports that an underage employee has sold a lottery ticket(s) to himself or herself. In response to an inquiry from Sen. Jochum, Ms. Juffernbruch explained that the required suspension of a retailer who voluntarily reported the sale of a lottery ticket(s) by an underage employee was the impetus for the amendments to the current rule.

Rep. Pettengill suggested that specific language regarding the waiver of a suspension be incorporated in the rule. Rep. Olson observed that the authority's discretion to waive a retailer's suspension might be warranted in yet unforeseen situations. Rep. Vander Linden suggested that specific language be included in the rule regarding a waiver of suspension based on voluntary reporting by a retailer and that the allowing of the sale of a lottery ticket(s) to an underage person a second and third time be excluded from the rule.

PUBLIC HEALTH DEPARTMENT Barb Nervig represented the department. Other interested parties included Threase Harms of Prevent Blindness Iowa.

ARC 1293C Proposed ch 52 pertains to vision screening. Ms. Nervig stated that based on comment received, the department will terminate this notice and submit a new Notice of Intended Action.

Ms. Harms expressed support for the termination.

ARC 1294C No questions on proposed 95.6(2) concerning overpayment of fees.

ARC 1292C Proposed amendments to 131.3(3) and 132.2(4) are related to the scope of practice for emergency medical care providers. In response to an inquiry from Rep. Pettengill, Ms. Nervig stated that the latest edition of the manual EMS Scope of Practice for EMS Providers adopted by reference will be available through the law library when this rule making is adopted and filed. After Ms. Nervig confirmed for Mr. Johnson that the manual is available electronically, he suggested that a link within the rules would assist the public in accessing the manual.

VOTER REGISTRATION COMMISSION Sarah Reisetter represented the commission.

ARC 1281C No questions on the proposed amendment to 2.16 pertaining to revision of the official Iowa voter registration application.

INSURANCE DIVISION Mark Crandell represented the division.

ARC 1295C No questions on proposed amendments to ch 59 regarding the duties of pharmacy benefits managers and insurers.

TRANSPORTATION DEPARTMENT Director Paul Trombino and Steve Gent represented the department. Other interested parties included Paul Oberhauser; Melvin Williams of the Sioux City Police Department; Justin Vondrak of the City of Sioux City; Austin Berg of Genesis Health System; Dennis McDaniel of the Windsor Heights Police Department; Dustin Miller of the Iowa League of Cities; and Marty Ryan of Fawkes-Lee and Ryan.

ARC 1260C Ch 144 pertains to automated traffic enforcement on the primary road system. Mr. Trombino stated that all public comment had been compiled and provided to the committee and that the transportation commission unanimously approved the rules for adoption. Mr. Gent summarized the requirements of ch 144, the purpose of which is to set forth a process for the use of both fixed and mobile automated traffic enforcement (ATE). He emphasized that ATE is to be used only on the primary road system, is to be considered only after other engineering and enforcement solutions have been explored and implemented, and is to be used only in high-crash, high-risk areas or school zones. He also summarized public comment, which resulted in two changes from the notice. Mr. Gent stated that the rules provide a minimal level of oversight and are intended to ensure safety on the primary road system.

Transportation Department (continued)

Discussion pertained to concurrent jurisdiction (department and municipality) over the primary road system within the municipal limits; the authority of the department (Iowa Code section 306.4(5)“a”) versus that of municipalities (Iowa Code chapter 364) to regulate automated traffic enforcement; the effect of city and county home rule provisions set forth in sections 38A and 39A of the Iowa Constitution; the criteria for changes to the primary road system and alternatives to ATE; the standards and process for the approval and location of ATE; the department-municipality collaborative process for making improvements on the primary road system; the relationship between multiyear plans and the status of existing ATE; the authority and policy for ATE in other states; the amount and distribution of fines; and the appeals process.

Mr. Oberhauser, in expressing opposition to the rules, stated that fixed ATE (i.e., red-light cameras) changes drivers’ behavior and saves lives and that the cameras are about improving safety, not raising revenue. Mr. Williams stated that in the rules, which are arbitrary and lack specific standards, the department exceeds the authority granted to municipalities by the legislature to determine how traffic laws on the primary road system are to be enforced. Mr. Vondrak concurred with Mr. Williams and added that mobile ATE units are not obstructions. Mr. Berg expressed opposition to the rules and stated that ATE is an important factor in the reduction of serious vehicle accidents. Mr. McDaniel stated the department had not afforded the City of Windsor Heights due process regarding a mobile ATE unit and that the rules neither create a partnership between the department and municipalities nor incorporate the perspective of law enforcement. Mr. Miller stated that at issue is whether the department or municipalities have the statutory authority to enforce traffic laws. Mr. Ryan stated that the department has the authority to promulgate rules regarding the primary road system unless the legislature changes that authority and that consistency in enforcement of traffic laws statewide is needed.

Committee members requested that the department provide information regarding the disposition of funds from ATE in other states, the existence of home rule in those states, and the opinion of the attorney general about whether the fines that result from ATE constitute taxation; and that Mr. Berg provide Genesis Health System data related to the decrease in the number of trauma-related admissions resulting from vehicle crashes including verification of other improvements in traffic safety that may have been contributing factors.

In response to a request from Sen. Jochum, Mr. Trombino offered to provide the committee with the department’s statutory authority to adopt ATE rules.

Committee business

The minutes of the January 10, 2014, meeting were approved.

The next meeting was scheduled for Friday, March, 7, 2014, at 9 a.m.

Adjourned

The meeting was adjourned at 12:20 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill